

2014 WL 4276831 (Idaho) (Appellate Brief)  
Supreme Court of Idaho.

Wayde T. NELSON, Appellant.,

v.

IDAHO DEPARTMENT OF HEALTH AND WELFARE, Respondent.

No. 41282-2013.

August 20, 2014.

Appeal from the District Court of the Fourth  
Judicial District of the State of Idaho In and for the County of Ada  
Honorable Kathryn A. Sticklen Presiding Judge

**Opening Brief of Appellant**

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**\*i TABLE OF CONTENTS**

I. TABLE OF AUTHORITIES .....	iii
II. STATEMENT OF THE CASE .....	1
A. Nature of the Case .....	1
B. Statement of the Proceeding .....	5
C. Statement of the Facts .....	9
1. October 22, 2009 Intentional Program Violation Notice .....	18
2. November 24, 2009 Inadvertent Household Error Notice .....	20
3. January 21, 2010 Intentional Program Violation Notice .....	22
4. March 11, 2010 Intentional Program Violation Notice .....	24
III. ISSUES ON APPEAL .....	27
IV. ARGUMENT .....	28
A. Standard of Review .....	28
B. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to exclude errors in management made by the Department that were dismissively characterized by the hearing officer in his Preliminary Decision of August 31, 2010, as errors “in the realm of customer service satisfaction, beyond the scope of the hearing office's authority to address.” .	28
1. Facts pertaining to argument .....	29
2. Why relief should be granted .....	29
C. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, who failed to prove Wayde .....	31
*ii Nelson's “intent” to commit an Intentional Program Violation (IPV) by an Enhanced Evidentiary Standard.	
1. Facts pertaining to argument .....	31
2. Why relief should be granted .....	35
D. The District Court erred by affirming the Decision of Administrator for Division of Welfare, Russell Baron, who affirmed Department's Decision, which failed to find that the hearing officer erroneously interpreted Wayde Nelson's exhibits included with his Application for Assistance concerning Victoria Nelson's role and intent .....	36
1. Facts pertaining to argument .....	36
2. Why relief should be granted .....	38

E. The District Court erred by affirming the Decision of Administrator for the Division of Welfare, Russell Baron, who affirmed Department's Decision, when the decision inaccurately characterized the Application For Assistance Interview process concerning the actions and intent of the participants .....	39
1. Facts pertaining to argument .....	39
2. Why relief should be granted .....	41
F. The District Court erred by affirming the Decision of Administrator for the Division of Welfare, Russell Baron, to reverse the Department's Decision, which indicated the "Silver Elite" account was Victoria's, not her son's .....	42
1. Facts pertaining to argument .....	42
2. Why relief should be granted .....	43
V. CONCLUSION .....	45
CERTIFICATE OF SERVICE	

### \*iii TABLE OF AUTHORITIES

Cases	
Bacon v. Toia, 648F.2d 801 (2d Cir.1981). aff d <a href="#">457 U.S. 132 (1982)</a> .....	18
<a href="#">Edwards v. California, 314 U.S. 160, 177 (1941)</a> .....	18
United States v. Ward, 575 F.Supp.159 (E.D.N.C. 1983) .....	14, 17
<i>Forester v. Ohio Dep't of Human Servs.</i> , No. 96CA24, 1997 LEXIS 4343 (Sept. 22, 1997) .....	11
<a href="#">Colorado v. New Mexico, 467 U.S. 310,316(1984)</a> .....	10, 11
<a href="#">Murphy v. I.N.S. 54 F. 3d 605, 610 ( 9th Cir.1995)</a> .....	32
<a href="#">Ortiz v. Eichler 794 F.2d 889 (3d. Cir. 1986)</a> .....	18
<a href="#">BLIEK v. PALMER, 102 F.3d 1472 (8th Cir. 1997)</a> .....	19, 22, 24, 26
<a href="#">Frank v. Ohio Dep't of Human Servs. 673 N.E.2d 653 (Ohio Ct. App.1996)</a> .....	19, 21, 26, 32
Wayde Nelson vs. IDHW, Case No.: 09-FH8042-04-224, January 8, 2010 .....	5, 40
Statutes	
<a href="#">Idaho Code §15-6-103</a> .....	43, 44
<a href="#">Idaho Code §67-5270</a> .....	9
<a href="#">Idaho Code §67-5271</a> .....	9
<a href="#">Idaho Code §67-5279(1)</a> .....	1, 9, 31, 36
<a href="#">Idaho Code §5-6-193(a)</a> .....	2,44
Other Authorities	
Americans with Disabilities Act of 1990 ( <a href="#">42 U.S.C. 12101 et seq.</a> ) .....	3, 4, 29, 30, 35,40
*iv Amended Americans with Disabilities Act of 2008. ....	3, 30, 35
Section 504 of the Rehabilitation Act of 1973 ( <a href="#">29 U.S.C. 794</a> ) .....	3, 4, 40
Title VI of the Civil Rights Act of 1964 ( <a href="#">42 U.S.C. 2000d et seq.</a> ) .....	3, 4, 40
Food & Nutrition Act of 2008, <a href="#">7 U.S.C. 2020 §4117(c)(2)</a> .....	3, 4, 29, 40
Civil Rights	
Age Discrimination Act of 1975 ( <a href="#">42 U.S.C.6101 et seq.</a> ) .....	3, 4, 40
<a href="#">7 U.S. Code § 2015(b)(1)</a> .....	3
Rules	
<a href="#">7 C.F.R. §243.16 (e)(2)(iv)</a> .....	20, 22, 24, 25, 26, 34
<a href="#">7 C.F.R. §253.8(e)(2)(iv)</a> .....	19, 20, 22, 23
<a href="#">7 C.F.R. §253.8</a> .....	19, 21, 23, 32
<a href="#">7 C.F.R. §273.8(a)</a> .....	13, 14, 17
<a href="#">7 C.F.R. §273.8(b)</a> .....	13, 30, 32, 35
<a href="#">7 C.F.R. §273.16(e)(6)</a> .....	2, 22, 24, 26, 34
Idaho Administrative Codes	
<a href="#">IDAPA 16.03.04.103</a> .....	11
<a href="#">IDAPA 16.03.04.011.01</a> .....	12
<a href="#">IDAPA 16.03.04.122</a> .....	40

IDAPA 16.03.04.125 .....	11
IDAPA 16.03.04.148 .....	9, 12
IDAPA 16.03.04.182 .....	12
IDAPA 16.03.04.155.01 .....	11
*v IDAPA 16.03.04.156.02. ....	12
IDAPA 16.03.04.216.02 .....	43
IDAPA 16.03.04.216.03 .....	43
IDAPA 16.03.04.227.03 .....	43
IDAPA 16.03.04.300 .....	13
IDAPA 16.03.04.314 .....	43
IDAPA 16.03.04.405.10 .....	17
IDAPA 16.03.04.675.01.02. (a)(b)(c)(d)(e) and 03 .....	2, 33
IDAPA 16.03.04.701. Penalties for an IPV .....	3

## **\*1 II. STATEMENT OF THE CASE**

### **A. Nature of the Case**

Comes now Wayde Nelson appealing to the Idaho Supreme Court from a Memorandum, Decision, and Order entered on the twenty-first day of June, 2013, by the Honorable Judge Kathryn A. Sticklen, presiding. The Memorandum, Decision, and Order are appealable orders under and pursuant to [Rule 11\(f\) I.A.R.](#)

This appeal is taken upon matters of law and fact. Mr. Nelson disagrees with Honorable Judge Kathryn Sticklen's findings on all of those substantive issues on which his Judicial Review to the District Court was filed. Mr. Nelson challenges the findings of the District Court and seeks review by Idaho Supreme Court related to findings, inferences, conclusions, or decisions which were: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; or (5) arbitrary, capricious, or else an abuse of discretion. [Idaho Code [I.C. §67-5279 \(3\)](#)]

Wayde Nelson's Petition for Judicial Review and Stay of Enforcement of Final Decision and Order of July 8, 2011 was filed with the District Court on August 4, 2011. Mr. Nelson has appealed to the Idaho Supreme Court to challenge the findings of the Idaho District Court, which indicated that (1) he committed an Intentional Program Violation (IPV) in applying for food stamps, and (2) he owes Idaho Department of Health and Welfare (the Department) for overpaid benefits.

**\*2** Mr. Nelson asserts that the District Court's basis, in affirming Idaho Department of Health and Welfare's final decision in his case, is not supported by substantial evidence on the record as a whole, or by clear and convincing evidence as to Intentional Program Violation (IPV) findings. The Administrator for the Division of Welfare's findings, which were affirmed by the District Court were in error and in excess of statutory authority in ruling against the Appellant, pursuant to a Uniform Probate Code provision, [Idaho Code [§15-6-193\(a\)](#)].

Judge Kathryn A Sticklen's Decision to affirm the Decision of the Administrator for the Division of Welfare, Russell Baron, imposes an Intentional Program Violation label on the Mr. Nelson, which was to exclude him from Food Stamp program participation for twelve (12) months and require him to return overpayments asserted to be owed by Mr. Nelson to the Department. In essence, the case below convicts Appellant of defrauding the Department in applying for Food Stamp benefits under federally sponsored welfare program guidelines administrated and enforced by the Idaho Department of Health and Welfare.

To prevail on an IPV Food Stamp “over issuance”, the Idaho Department of Health and Welfare (Department) must prove the over issuance was “caused” by an “intentional, knowing and willful program violation”, [IDAPA 16.03.04.675.01](#). Moreover, respecting federal guidelines, the Department must prove the targeted household member, Appellant in this case, “committed, and intended to commit” an IPV. 7CFR [§273.16\(e\)\(6\)](#). Federal law emphasizes in this somewhat redundant language not

simply an act or omission in supplying data, but the requisite knowing intent to break Food Stamp program rules. Successively, onerous penalties accompany subsequent program violations, thereby increasing significantly a Food Stamp \*3 recipient's future program disqualification risk. [7 U.S.C. §2015(b)(1)] [IDAPA 16.03.04.701]. Mr. Nelson is principally troubled by the implications to himself and his daughter of a permanent record that he has been found to have defrauded the Idaho and federal food assistance program.

This Appeal to the Supreme Court is about the failure of process and communications between a disabled applicant with a condition of childhood onset seizure disorder(epilepsy), who applied for food stamp benefits for his household, and the agency providing these benefits. The Department erred in the management of Wayde Nelson's case, disregarding his disability reported on an Application for Assistance dated January 30, 2009, (stamped received by the Department on February 6, 2009), as well as a Recertification application received by the Department on April 29, 2009. Mr. Nelson is a protected party under several Acts of the U.S. Government due to his disability. [Food & Nutrition Act of 2008, 7 U.S.C. 2020 §4117(c)(2) Civil Rights Compliance] [I.C.67-5279(1)] [Section 504 Rehabilitation Act of 1973] [Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)].

According to Section 11 of the Food & Nutrition Act of 2008 (7 U.S.C. 2020) § 4117 (c)(2) Civil Rights Compliance. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.); (B) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); (C) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and (D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). In 2008, the Americans With Disabilities Act, became the Amended Americans with Disabilities Act of 2008, covering individuals with epilepsy even if their condition was in \*4 remission. Title I of the Americans with Disabilities Act of 1990 (ADA) makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

It is relevant for the Supreme Court to know that Wayde Nelson has disabilities identified under the Social Security Act and the Americans with Disabilities Act. These disabilities had childhood onset, prior to the age of 22. He is currently receiving SSI, and SSI back-payments from the Social Security Administration, funds for Assistance to the Aged, Blind, and Disabled (AABD), Food Stamps, and AABD Medicaid from Idaho Department of Health and Welfare. Mr. Nelson is under treatment for these disabling conditions.

Wayde Nelson had disability at the time of first applying for assistance with Idaho Department of Health and Welfare. From 1999 to 2006, he was involved in retraining for safer employment through the California Department of Rehabilitation.

During the time Wayde Nelson's involvement with Idaho Department of Health and Welfare by applying for food assistance and Medicaid, Mr. Nelson was involved with Idaho Department of Vocational Rehabilitation (IDVR), in an attempt to find safer employment for a person with seizure disorder (epilepsy). He was exempt from the Job \*5 Search Assistance Program (JSAP), IDAPA 16.03.04.227.03, and received Assistance to the Aged, Blind, and Disabled (AABD) Medicaid at a hearing on January 8, 2010 at which Edward C. Lockwood was the presiding hearing officer. [Wayde Nelson vs. IDHW, Case No.: 09-FH8042-04-224, January 8, 2010.]

## B. Statement of the Proceeding

During the Petition for Judicial Review by the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, District Judge Kathryn A. Sticklen presented facts and procedural background derived from the Department's brief in her Memorandum, Decision, and Order filed on June 21, 2013. Judge Sticklen inaccurately concluded the facts and

procedural history appear to be essentially undisputed. [*Memorandum Decision and Order, Case No. CV-OT-2011-14844, page 1*].

Judge Kathryn A. Sticklen's Memorandum, Decision, and Order was entered nearly twenty three (23) months after Mr. Nelson filed his Petition for Judicial Review with the District Court. In making a decision, the facts and procedural background examined by Judge Kathryn A. Sticklen were exclusively derived from the Department's Brief.

Facts and procedural background found in the District Court's Memorandum, Decision, and Order failed to consider Wayde Nelson's *disability* of childhood onset seizure disorder (epilepsy), failed to consider the resources available to an individual with disability despite testimony regarding Mr. Nelson's disability, applications for assistance (AFA) provided into evidence, in which Mr. Nelson reported disability to the Department, or errors made by the Department, when the Department failed to provide Mr. Nelson with an EBT card for more than \*6 2-months so he could access funds to purchase food, or when the Department finally provided an EBT card to Mr. Nelson, he later discovered cards were issued to other unknown participants who were able to purchase food totaling \$348.89, using his account prior to the Department closing their EBT cards. The Department preferred to investigate the funds Wayde Nelson's **elderly** mother was forced to loan to him when the Department failed to follow Idaho or Federal regulations in the provision of assistance to a disabled, unemployed, and needy individual.

The District Court failed to acknowledge the numerous errors made by Department personnel, instead affirming the Department's decision and supporting Hearing Officer Edward C. Lockwood's exclusion of Department errors as being "beyond the scope of the hearing officer's authority to address." Included in Judge Sticklen's June 21, 2013 Memorandum Decision and Order, under Facts and Procedural Background, is a statement made by the Hearing Officer in his Decision, affirmed by Judge Sticklen:

"This case is anything but a straightforward one. *Initially, the hearing officer observes that Department staff committed a number of errors in the management of Wayde's case, including the failure to provide him with an operable EBT card for more than 2-month), and by permitting another individual to access his Food Stamp account.* These delays and errors doubtless caused frustration, hardship and expense for Wayde. In fairness, Wayde has but one case to manage, and Department staff have untold numbers. Nevertheless, errors of that nature reside in the realm of custom service satisfaction, and are beyond the scope of the hearing officer's authority to address in a hearing such as this. The only questions presented to the hearing officer is whether the Department fulfilled the burden of proof to establish that Wayde committed an IPV and, whether or not he committed an intentional program violation, as the department established that he owed an overpayment in the amended amount of \$1,031. Finding of Fact, Conclusions of Law and Preliminary Decision, at 23." [*Memorandum, Decision, Order, June 21, 2013, Case No. CV-OT-2011-14844, P 1-2*]

\*7 The action against Wayde Nelson was flawed by an incomplete agency record, full of Department error, which wasn't considered by the District Court at the time of Judge Kathryn A Sticklen rendering her decision. The decision was prejudiced by facts provided by the Department, which were limited and based on Department errors. Judge Kathryn A. Sticklen held the case for 23 months until she affirmed the decision of the Administrator for the Division of Welfare, Russell Baron on June 21, 2013. She concluded that Mr. Nelson performed an Intentional Program Violation (IPV) and owed the Department \$323.00.

At the Food Stamp Intentional Program Violation hearing on May 12, 2010, it was confirmed by Leslie Antram that Wayde Nelson declared he was disabled in his application.

Taken from the Transcript of the Food Stamp Intentional Program Violation Hearing before Hearing Officer Edward C. Lockwood Docket No. 10-FH8268-04-052, May 12, 2010, Page 21, is the following:

1 M. BEIG: Is Wayde Nelson, did he declare that he was disabled in his application?

2 L. ANTRAM: He marked "yes" but he didn't specify how on the application.

3. M. BEIG: When you had some cross-examination in aid of objection from Mr.

4 McCollum, there was a discussion about what you approved. If I understood correctly, did

5 you approve expedited Food Stamps for Mr. Nelson?

6 L. ANTRAM: I probably- Yes, because his expenses are more than his income, because

7 we don't count his mom's income because it's a loan.

At no time did the District Court address Mr. Nelson's disability of childhood onset seizure disorder, nor was the matter of the Department failing to reimburse Food Stamp \*8 funds to Wayde Nelson's account after the Department admitted to error in issuing EBT cards to other individuals who were able to access \$348.89 from Wayde Nelson's EBT EBT account. Reimbursement did not occur, leaving the Department owing Wayde Nelson \$25.89, instead of Mr. Nelson owing the Department \$323.00.

[Idaho Code §67-5279\(3\) and §67-5279\(4\)](#) address reversing and remanding a case:

The agency's decision can only be reversed and remanded if it violated constitutional or statutory provisions; exceeded the agency's statutory authority; was made upon unlawful procedure; was not supported by substantial evidence based on the entire record; or was arbitrary, capricious, or an abuse of discretion. [Idaho Code§67-5279\(3\)](#). An agency's decision must be affirmed unless substantial rights of the appellant have been prejudiced. [Idaho Code§67-5279\(4\)](#). Evidence is substantial only if a reasonable mind could accept the evidence as support for a conclusion. [Skyview-Hazedel, Inc. v. Idaho Department of Health and Welfare, 128 Idaho 756,760,918 P.2d 1201 \(1996\)](#), citing [Politte v. Idaho Dep't ofTransp., 126 Idaho 270,272, 882 P.2d 437 \(1994\)](#). “It is the burden of the party contesting the Department's decision to show how the Department erred in a manner specified under [Idaho Code§67-5279](#), and to establish that a substantial right has been prejudiced.”

The District Court failed to reverse or remand the case, when there was evidence showing the Department violated constitutional or statutory provisions, exceeded the agency's statutory authority, made decisions upon unlawful procedure, made decisions that were not supported by substantial evidence based on the entire record, and were arbitrary, capricious, or an abuse of discretion.

Procedures concerning judicial review of Idaho state agencies determinations are set forth in the Idaho Administrative Procedure Act as identified below:

Judicial review of an agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter:

\*9 A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of [section 67-5271](#) through [67-5279, Idaho Code](#).

A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of [sections 67-5271](#) through [67-5279 \[I.C. §67-5270\]](#). [*Idaho Administrative Procedure Act, Title 67, Chapter 52*].

In reviewing an agency's decision, an appellate court may not “substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” [Idaho Code: [I.C. §67-5279\(1\)](#)] Instead the court must defer “to the agency's findings of fact unless they are clearly erroneous.” [*Price v Payette County Board of County Commissioners, 131 Idaho 426, 42, 9 58 P.2d 583, 586 (1998)*]; [*Bennett v. State, 147 Idaho 141, 142, 206 P. 3d 505, 506 (Ct. App.2009)*].



Appellant was aggrieved by a final agency action, in which the agency's findings of fact were clearly erroneous. The Department failed to consider Appellant's disabilities, and made numerous errors in the management of his case. Appellant was entitled to judicial review under this chapter. He complied with requirements of [I.C. 67-5279](#).

### C. Statement of the Facts

The Supplemental Nutrition Assistance Program (SNAP) continues to be called the Food Stamp Program in the State of Idaho, though food stamps are no longer in use. Money provided by the United States Department of Agriculture is deposited nationwide into recipient's debit accounts by JP Morgan Chase. EBT cards are issued by the Department so recipients can access \*10 funds to purchase food for their household. Without a card, it is impossible for a recipient to access funds in order to purchase food for his/her household. [[IDAPA 16.03.04.148](#)].

From the inception, the record is clear that Appellant had no employment income and was dependent on his now 79 year old disabled mother, Victoria Nelson, who was living on Social Security Retirement benefits, work's compensation benefits, and borrowings on a residential reverse mortgage on her home, in order to help support her son and granddaughter. By counting her payments to Mr. Nelson during February 2009 as a non-loan, thus a component of Mr. Nelson's household resources, the Department reached its finding of an overpayment of food stamp benefits for which it imposed the one month payback. It is this finding, in particular, that Wayde Nelson contends is unsupported by the factual record and the interactions and communications between the parties. The Department never communicated to Wayde Nelson that his documentation of a loan was inadequate, thereby placing him on notice that his mother's financial assistance may disqualify him and his daughter for food stamp eligibility purposes.

The essence of this case lies in events occurring between December 8, 2008 and March 20, 2009. On the first of those dates Wayde Nelson applied for food stamp benefits; on the second, his assigned EBT card was initially used. During that 103 day interval Mr. Nelson did not have access to food stamp benefits. Yet, it is during that interval, the Department contended that Mr. Nelson "intentionally, knowingly, and willfully" committed an IPV, and asserts that the record, by clear and convincing evidence, supports its findings, its imposed one year program disqualification penalty and the \$323.00 benefit over-issuance charge for \*11 February 2009, a time when Appellant had no access to food stamp benefits. Clear and convincing evidence was not provided. [[Colorado v. New Mexico, 467 U.S. 310, 316 \(1984\)](#)]. Clear and convincing evidence is required in order to show failure to report income as an intentional concealment or withholding of facts. [[Forester v. Ohio Dep't of Human Servs., No. 96CA24, 1997 LEXIS 4343 \(Sept. 22, 1997\)](#)].

Mr. Nelson first applied for expedited food stamps with the Department on December 8, 2008 [A.R. Ex. 1]. Mr. Nelson was entitled to expedited services. For households entitled to expedited services, the Department will provide Food Stamps to the household within seven (7) days of the application date. [[IDAPA. 16.03.04.155.01](#)].

To expedite consideration of food stamp assistance requests, [IDAPA 16.03.04.101](#) authorizes "first day" contact action, shortening the initial process, and specifically provides the following statement: "The household must turn in page one (1) of the AFA to file for Food Stamps". Emphasizing the priority given to requests for basic food assistance, [IDAPA 16.03.04.103](#) repeats that an AFA applicant "can file for Food Stamps by turning in page one on the AFA..." "thereby protecting the application date and ensuring prompt issuance of food assistance." By [IDAPA 16.03.04.125](#), the Department undertakes to "... schedule interviews to make sure eligible households get Food Stamps within thirty (30) days of application."

The Department approved Mr. Nelson and his minor daughter for expedited Food Stamp benefits. The Department was to provide Food Stamps to the household within seven (7) days of the application. Food Stamps were not provided to Nelson's household until January 2, 2009, Despite being expedite eligible, Mr. Nelson was unable to purchase food for 103 days \*12 after applying, since he wasn't provided a debit card in order to access funds from the debit account to purchase food. [[IDAPA 16.03.04.155.01](#)].

Wayde Nelson's household was an expedite eligible household, due to no income and unemployment. If this is not discovered at initial screening, the Department will provide expedited services to an expedite eligible household within seven (7) days. Seven (7) days begins the day after the Department finds the household is entitled to expedited services. The Department by not providing Mr. Nelson with a debit card, disregarded Mr. Nelson's expedite eligibility. [IDAPA. 16.03.04.156.02].

IDAPA 16.03.04.148 addresses Delays in Processing caused by the Department. A delay In processing exists when the Department does not determine Food Stamp eligibility within thirty (30) days of application IDAPA 16.03.04.182. The Department did not determine the cause of the delay or why Wayde Nelson had not received an EBT card. The Department did not offer or try to help complete Nelson's Application for Assistance IDAPA 16.03.04.148.01.

Though funds were seemingly being deposited into Wayde Nelson's debit account, Mr. Nelson wasn't provided with an EBT card, which was necessary in order for him to access funds to purchase food. In fact, he wasn't provided with any means of accessing funds, which were allegedly deposited into an account that he could withdraw from to purchase food for his household. He also wasn't provided an EBT Handbook, which would have informed him about Idaho Department of Health and Welfare Rules governing Electronic Benefits (EBT) or Public Assistance and Food Stamps. Mr. Nelson did not have previous public assistance to know an EBT card should be assigned to him in order to access food assistance. [16.03.04.011.01].

**\*13** A second application was filled out on January 30, 2009, mailed, and received by the Department on February 6, 2009 [AR 13, Ex 6]. A recertification application was filed with the Department on April 29, 2009 [AR 13 Ex 9]. On these Applications for Assistance (AFA), Mr. Nelson reported his disability of seizure disorder (epilepsy). Several other documents were provided to the Department as requested. There was no AFA help. [IDAPA 16.03.04.148.01].

At the time of reviewing Wayde Nelson's applications for assistance, the Department overlooked information regarding his disability provided on his AFA received by the Department on February 6, 2009 [A.R. Ex. 6, IDHW00270-6], and on his recertification filed on April 29, 2009 [A.R. Ex. 9, IDHW00291-5], failing to interview him about his disability. Resource levels are different for those with disability. [7 C.F.R. 273.8(b)] [IDAPA 16.03.04.300].

Wayde Nelson requested a copy of his Food Stamp transaction history early in January 2010. Mr. Nelson was concerned regarding funds the Department claimed to deposit into his EBT account after January 2, 2009, since he didn't receive an EBT card until March 15, 2009 and was unable to purchase food for his household. The Department refused to provide Mr. Nelson with his food stamp history. Having no success in accessing information from the Department, Mr. Nelson contacted JP Morgan Chase, the bank depositing funds into Food Stamp debit accounts nationwide.

On January 25, 2010, at 5:41:32 AM, Wayde Nelson received an e-mail response from JP Morgan Chase Customer Service, stating, "with reference to your e-mail, we at the customer service can mail out the last three months transactions. You may login to the EBT website at [www.ebt.account.ipmorgan.com](http://www.ebt.account.ipmorgan.com), where 3 months of account history can be viewed and/or **\*14** downloaded for free. However, if you need the transactions more than 6 months please contact your caseworker at the Division of Welfare on weekdays between 8 AM to 5 PM EST for further information. Regards, JP Morgan EFS." [A.R. Ex 121, WN000105].

The last three months of transaction history was insufficient, since it was between January January through March 2009 that Mr. Nelson was most interested in - the time when he hadn't been issued an EBT card so he could access funds to purchase food for his household.

Following the direction of JP Morgan Chase, on February 17, 2010, Wayde Nelson sent a letter to the Department of Health & Welfare Records Department, P.O. Box 83720, Boise, ID, requesting a print out of the first three months he used his EBT card after receiving it. Attached to the Department's letter was JP Morgan Chase's January 25, 2010 reply. [A.R. Ex. 121, WN0000104-6].



On March 5, 2010, Wayde Nelson sent a letter to James Dimon, JP Morgan Chase CEO, addressing: 1) Quest EBT Card Account No: XXXXXXXXXXXXXXXXXXXX; 2) USDA Supplemental Food and Nutrition Program; 3) Idaho Department of Health and Welfare, and, 4) Recipients, Wayde T. Nelson and his child. Mr. Nelson asked Mr. Dimon to resolve the issue of a conflict between Idaho Department of Health and Welfare and JP Morgan Chase regarding who maintains and provides account information for customers. [A.R. Ex. 121, WN000107].

Following a period of 103 days in which the Department **neglected** to issue Wayde Nelson an EBT card, on March 15, 2009, Mr. Nelson was finally issued EBT card No.: XXXXXXXXXXXXXXXXXXXX. [A.R. Ex. 121, WN000093].

**\*15** On March 18, 2010, Wayde Nelson received a letter from Tonia Walgamott, Electronic Payment Specialist (EPS), 601 Pole Line Road, Twin Falls, Idaho 83301, which was copied to the EPS Manager, Orié Garcia. She was responding to Mr. Nelson's letter of March 5, 2010, in which Nelson requested information about his food stamp deposits and debits. She provided the alleged details regarding Nelson's account, and apologized for the delay and frustration Wayde Nelson encountered in trying to gather information regarding his Quest EBT account. She told him it is "our" goal to eliminate barriers that our customer may experience when accessing information regarding their cases. Attached to her letter was a inquiry for Case # 0708513 from JP Morgan Chase. [A.R. Ex. 121, WN000092-97].

The transaction inquiry lists three numbers, Benefit Issue No. 5076921002757743, Card No. XXXXXXXXXXXXXXXXXXXX assigned to Wayde Nelson on March 15, 2010, and two card Numbers issued erroneously by the Department to other recipients. These cards were No. 5076920009088557 and No. 50769200090088532. [A.R. Ex 121, WN000093-96].

The transaction inquiry confirms that Wayde Nelson first used his EBT card No. XXXXXXXXXXXXXXXXXXXX, on March 20, 2009 after the Department provided him with a card on March 15, 2009. The cards erroneously issued to others, whom the Department refused to identify, were used from March 9, 2009 through March 17, 2009 when the cards became inactive. Transactions on the erroneously issued cards totaled \$348.89. The money was never reimbursed into Nelson's Quest EBT account. Though the Department admitted to the error, but refused to identify who the cards were issued to, based on maintaining privacy for these individuals.

**\*16** On a second application for assistance file stamped by the department as received on February 6, 2009 [A.R. Ex. 6], Wayde Nelson reported that he had a disabling condition of childhood onset seizure disorder. He again reported seizure disorder on an April 29, 2009 Food Stamp Recertification [A.R. Ex. 9]. Food Stamp caseworkers with the Department didn't interview Mr. Nelson about his disability, and generally disregarded the fact that it was reported. Mr. Nelson was exempt from participating in the Job Search Assistance Program operated by Arbor Education and Training as of October 23, 2009 due to permanent disability, proven by records from California Department of Rehabilitation. [A.R. Ex.100, WN000088]

Wayde Nelson was not provided an EBT card for 103 days. The month for which a Intentional Program Violation penalty was eventually issued, February 2009, Wayde Nelson had no access to food assistance since he hadn't been provided with an EBT card to access funds so he could purchase food for his household.

Despite allegations made in Notices and Demands made by Eileen Williams, Fraud Investigator with Idaho Department of Health and Welfare, Wayde Nelson provided two groups of attachments to the Department confirming his resources at the time of submitted his Applications for Assistance: (1) US Bank statement for the Silver Elite account #455 for October 2-6, 2008, attached to both his hand-delivered December 8, 2008 AFA [A.R. Ex. 2-a], and his mailed January 30, 2009 AFA (bearing the Department's intake/receipt stamp of "Feb 06,2009" and referred to by the parties as the February application) [A.R. Ex. 7-a], and (2) Documents prepared and signed by Victoria Nelson, Wayde Nelson's now 79 year old mother. In December 2008, these consisted of December 3 letter [A.R. Ex. 2-b], Contribution Statement **\*17** [A.R. Ex 2-c], and Loan Forbearance Statement [A.R. Ex. 2-d]. In February 2009 Victoria prepared/signed documents were a loan verification letter [A.R. Ex. 7-b], a January

30, 2009 "Repayment Agreement" [A.R. Ex. 7-c], and a resubmitted/resigned "Contribution Agreement" [A.R. Ex 7-d] Loans are excluded as income. [IDAPA 16.03.04.405.10].

There is no evidence indicating Wayde Nelson made a false or misleading statement, or misrepresented, concealed, or withheld facts in order to obtain Food Stamp benefits, which his household was not entitled to receive, or that he committed any act that violated a Federal statute or regulation related to the acquisition of Food Stamps. In order to trigger the application of regulations related to an Intentional Program Violation, there must be a willful concealment of pertinent information. [Code of Federal Regulations: 7 C.F.R. 253.8(a)] [United States v. Ward, 575 F.Supp.159(E.D.N.C. 1983)].

The Notices of Intentional Program Violations and Demands mailed to Wayde Nelson on October 22, 2008, November 24, 2009, January 21, 2010, and March 11, 2010 all alleged that Wayde Nelson owed the Department \$1,380.00. The Department vacillated regarding allegations of program violations against Wayde Nelson, changing them on Notices and th Demands mailed to him on October 22, 2009, November 24, 2009, January 21, 2010, and March 11, 2010. The Department failed in its interviewing duties, in which the Department is required to explain rights, responsibilities and reporting requirements, basic program procedures, and to resolve unclear or incomplete information. This wasn't done during Mr. Nelson's interviews. [IDAPA 16.03.04.01.122].

Food Stamp offices should not assume that recipients are dishonest. Poverty and \*18 The Department must provide enough information to give the household a meaningful opportunity to contest the action. [Ortiz v. Eichler 794 F.2d 889 (3d. Cir. 1986)]. Food Stamp offices should not assume that recipients are dishonest. Poverty and immorality are not synonymous.[Bacon v. Toia, 648F.2d 801 (2d Cir.1981). aff'd 457 U.S. 132 (1982)] [Edwards v. California, 314 U.S. 160, 177 (1941)]

1. *First Notice of Program Violation sent to Wayde Nelson for Intentional Program Violation by Idaho Department of Health and Welfare dated October 22, 2009* [A.R. Ex. 118, WN000001-8]

On October 22, 2009, Eileen Williams, Investigator with Idaho Department of Health and Welfare Audits and Investigations Unit, mailed Wayde Nelson a Demand Letter for Payment of Overissuance/Overpayments and Repayment Agreement as well as attached documents, which indicated the Department was accusing him of an IPV Intentional Program Violation (IPV) in the receipt of Food Stamps, based on the allegation that he failed to report bank accounts on applications filed on December 3, 2008, February 6, 2009, and April 29, 2009 (No Application was filed on December 3, 2008 - it was December 8). The amount of alleged over-issuance was \$1380.00, and the Demand indicated this was Wayde Nelson's first notice. Eileen Williams proposed that Nelson sign disqualification documents and a promissory note indicating that he received benefits he didn't qualify for and that he agreed to pay back Food Stamp funds for the months of February through May 2009. Eileen Williams later referred to the documents as Form 0545, Waiver of Disqualification Hearing, instructions and letter. The paperwork she provided to Mr. Nelson indicated he could come to 450 State Street to see the evidence against him. She said an interview would occur on November 12, 2009. A Disqualification Hearing wasn't scheduled, No such notice was ever received. Eileen Williams didn't physically sign the document. There \*19 were conflicting statements throughout the documents.

As of the first Notice of Intentional Program Violation and Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement and included documents sent to Wayde Nelson on October 22, 2009, Eileen Williams, the Department's fraud investigator had not substantiated that Wayde Nelson committed an intentional program violation. On the first Notice, the reason for the alleged overpayment was: You failed to report all bank accounts with US Bank on application 12/3/08, 2/6/09, and 4/29/09. There was no application on 12/3/08. The first AFA was dated 12/8/08. [A.R. Ex. 118, WN000001-8].

Pursuant to Code of Federal Regulations, 7 C.F.R. 253.8(e), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed an intentional program violation documentary evidence is needed to prove an intentional program violation.

More than documentary evidence is needed to prove an intentional program violation. [*Frank v. Ohio Dep't of Human Services*, 673 N.E.2d 653 (Ohio Ct. App. 1996)].

The demand letter was inadequate because it did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. [*BLIEK v. PALMER*, 102 F.3d 1472 (8th Cir. 1997)].

The Department did not act on the October 22, 2009 Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for prosecuting a program violation had passed. The Department must either close the case or conduct \*20 a disqualification hearing within 90 days of notifying the household of an intentional program violation. [*Code of Federal Regulations*, 7-CFR 243.16 (e)(2)(iv)]

2. *Second Notice of Program Violation sent to Wayde Nelson for Inadvertent Household Error by Idaho Department of Health and Welfare dated Nov 24, 2009* [A.R. Ex. 16 (a)(b)].

November 24, 2009, Eileen Williams, Investigator with Idaho Department of Health and Welfare Audits and Investigations, mailed Appellant Wayde Nelson an unsigned Demand Letter for Payment of Overissuances/Overpayments And Repayment Agreement, indicating the Department was accusing him of an *Inadvertent Household Error (IHE)* in the receipt of Food Stamps, based on an allegation that he failed to report bank accounts. The first notice box was left unchecked, since this was the second notice. Eileen Williams proposed that he sign disqualification documents and a promissory note indicating that he received benefits he didn't qualify for and that he agreed to pay back Food Stamp funds for the months of February through May 2009. The amount of repayment necessary was \$1380.00 for the months of February 2009 through May 2009. Eileen Williams later referred to the documents as Form 0545, Waiver of Disqualification Hearing, instructions and letter. There were other documents including a Promissory Note to pay back overages. The paperwork she provided to Nelson indicated he could come to 450 State Street to see the evidence against him. Wayde Nelson had already been to this headquarters office where Eileen Williams refused to provide him with the evidence against him.

On the November 24, 2009 Notice of Intentional Program Violation and Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement and included \*21 documents, sent to Wayde Nelson on November 24, 2009, Eileen Williams, the Department fraud investigator had not substantiated that Wayde Nelson committed an intentional program violation as is required by 7 C.F.R. 253.8(e), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating the household member has committed an intentional program violation. Documentary evidence is needed to prove an intentional program violation.

Confirming that the Department had not substantiated that Wayde Nelson had committed an IPV at the time of the Department sending Mr. Nelson the October 22, 2009 papers related to the Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, on the November 24, 2009, the Demand Letter at No. 5, it was indicated the overpayment was caused by an *Inadvertent Household Error (IHE)*, not an Intentional Program Violation (IPV). On the November 24, 2009 Demand Letter, the reason provided at No. 4 for overpayment was: *You failed to report bank accounts correctly at 12/09, 2/09, and 4/09 applications.* [A.R. Ex 16(a).]

Pursuant to Code of Federal Regulations, 7 C.F.R. 253.8(e), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed an intentional program violation documentary evidence is needed to prove an intentional program violation.

More than documentary evidence is needed to prove an intentional program violation. [*Frank v. Ohio Dep't of Human Services*, 673 N.E.2d 653 (Ohio Ct. App. 1996)].<sup>21</sup>

**\*22** The demand letter was inadequate because it did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. [*BLIEK v. PALMER*, 102 F.3d 1472 (8th Cir. 1997)]

The Department had not acted on the previous Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for prosecuting a program violation had passed. The Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional program violation. [*Code of Federal Regulations*, 7-CFR 243.16 (e)(2)(iv)]

3. Third Notice of Program Violation sent to Wayde Nelson for Intentional Program Violation by Idaho Department of Health and Welfare dated January 21, 2010. [A.R. Ex. 16 (a)(b)].

On January 21, 2010, Eileen Williams, Investigator with Idaho Department of Health and Welfare Audits and Investigations Unit mailed Mr. Nelson a third unsigned Demand Letter For Payment of Overissuances/Overpayments and Repayment Agreement indicating the Department of Health and Welfare was again accusing him of an Intentional Program Violation in the receipt of Food Stamps. This was the third Demand Notice, yet paperwork was checked indicating this was the first notice. Though additional evidence was provided, this document was almost the same as the first sent to Nelson on October 22, 2009. Though Mr. Nelson was represented by Joe McCollum, this third Notice of Program Error was never sent to his attorney, Joe McCollum. Wayde Nelson provided the document to him.

This third Notice, which was actually a second Notice of Intentional Program Violation dated January 21, 2010, mailed to Wayde Nelson about three months after the October 22, 2009 **\*23** Demand Letter For Payment of Overissuances/Overpayments and Repayment Agreement and two months after the Department mailed Mr. Nelson the November 24, 2009 Demand Letter For Payment of Overissuances/Overpayments and Repayment Agreement. The paperwork again proposed that Mr. Nelson sign disqualification documents and a promissory note indicating that he received benefits he didn't qualify for and that he agreed to pay back Food Stamp funds for the months of February 2009 through May 2009.

Pursuant to Code of Federal Regulations, 7 C.F.R. 253.8(e), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed an intentional program violation documentary evidence is needed to prove an intentional program violation.

The amount to be paid back was \$380.00, the same as the amount indicated in the October 22, 2009 and November 24, 2009 Demand Letters. Department Investigator Eileen Williams later referred to the document as Form 0545, Waiver of Disqualification Hearing, instructions and letter. There were other documents including a Promissory Note to pay back overages. The paperwork provided indicated that Wayde Nelson could come to 450 State Street to see the evidence against him. No interview or hearing was scheduled.

On the January 21, 2010 Demand Letter for Payment of Overissuances, Overpayments and Repayment Agreement, the Audits and Investigations Unit now indicated that Wayde Nelson committed an Intentional Program Violation (IPV). The Demand Letter and additional documents were unsigned, and indicated this was Mr. Nelson's first notice, when it was actually his third notice of program violation. The Department, now expanded on No. **\*24** 4, providing the alleged reasons for overpayment, which were: you failed to report bank accounts with US Bank correctly at applications 12/8/08, 1/30/09, and 4/29/09. At applications dated and provided to the Department 12/8/2008, you claimed a checking account with US Bank. You failed to list any account numbers. You failed to report individual ownership in a second US Bank checking account. At Application dated 1/30/09 and provided to the Department on 2/6/09, you claimed only the individual US Bank account and listed only one account number. You failed to list the joint US Bank account. At application dated and provided to the Department 4/29/09, again you claimed only the individual US Bank account and listed only one account number. [A.R. Ex. 118, WN000119].

More than documentary evidence is needed to prove an intentional program violation[[Frank v. Ohio Dep't of Human Services, 673 N.E.2d 653 \(Ohio Ct. App.1996\)](#)].

The Department had not acted on the previous Demand Letters for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for prosecuting a program violation had passed. The Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional program violation. [*Code of Federal Regulations, 7-CFR 243.16 (e)(2)(iv)*]

The demand letter was inadequate because it did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. [*BLIEK v. PALMER, 102 F.3d 1472 (8th Cir. 1997)*]

4. *Fourth Notice of Program Violation sent to Wayde Nelson for Intentional Program Violation by Idaho Department of Health and Welfare dated March 11, 2010.*[A.R.Ex. 17-al

\*25 The Department had not acted on any of the three previous Demand Letters for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for closing or prosecuting a program violation had passed. Code of Federal Regulations, 7-CFR 243.16 (e)(2)(iv), indicates the Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional violation. This was not done.

While paperwork provided to Wayde Nelson in the Second Demand Notice indicated the allegations were for an *Inadvertent Household Error*, the allegations were being dealt with by Ms. Williams as a fraud. The Department did not conduct a Disqualification Hearing within 90 days of first notifying Wayde Nelson or his household of a Program Violation on October 22, 2009, nor did a Disqualification Hearing take place after the November 24, 2009 or January 21, 2010 notifications.

On the March 11, 2010 Demand Letter for Payment of Overissuances, Overpayments and Repayment Agreement, for the third time the Department Audits and Investigations Unit indicated that Wayde Nelson committed an Intentional Program Violation (IPV). The Demand Letter and additional documents were unsigned and paperwork at No. 6 on the Demand Letter indicated this was Wayde Nelson's first notice. At No. 4, the reasons cited for the overpayment were the same as those found on the January 21, 2010 Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement: you failed to report bank accounts with US Bank correctly at applications 12/8/08, 1/30/09, and 4/29/09. At applications dated and provided to the Department 12/8/2008, you claimed a checking account with US Bank. You failed to list any account numbers. You failed to report individual \*26 ownership in a second US Bank checking account. At Application dated 1/30/09 and provided to the Department on 2/6/09, you claimed only the individual US Bank account and listed only one account number. You failed to list the joint US Bank account. At application dated and provided to the Department 4/29/09, again you claimed only the individual US Bank account and listed only one account number.

Pursuant to Code of Federal Regulations, [7 C.F.R. 253.8\(e\)](#), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed an intentional program violation documentary evidence is needed to prove an intentional program violation.

Code of Federal Regulations, 7-CFR 243.16 (e)(2)(iv), indicates the Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional violation. This was not done.

The March 11, 2010 Demand Letters for Payment of Overissuances/Overpayments and Repayment Agreement, was mailed to Wayde Nelson nearly 5 months after the Department claimed it had documentary evidence substantiating that Wayde Nelson committed an intentional program violation. More than documentary evidence is needed to prove an intentional program violation. [[Frank v. Ohio Dep't of Human Services, 673 N.E.2d 653 \(Ohio Ct. App.1996\)](#)].



The demand letter was inadequate since it did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. [BLIEK v. PALMER, 102 F.3d 1472 (8th Cir. 1997)]

### **\*27 III. ISSUES ON APPEAL**

A. Did the District Court err by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to exclude errors in management made by the Department that were dismissively characterized by the hearing officer in his Preliminary Decision of August 31, 2010, as errors “in the realm of customer service satisfaction...beyond the scope of the hearing officer's authority to address”?

B. Did the District Court err by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to affirm the Department's decision indicating that Wayde Nelson committed an Intentional Program Violation when the Department failed to establish an independent “intent” element by clear and convincing evidence?

C. Did the District Court err by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to affirm the Department decision, which failed to find that the hearing officer erroneously interpreted Wayde Nelson's exhibits included with his Application for Assistance concerning Victoria Nelson's role and intent?

D. Did the District Court err by affirming the decision of the Administrator for the Division of Welfare, Russell Baron to affirm the Department's decision when the decisions inaccurately characterized the Application for Assistance Interview process concerning the actions and intent of the participants?

E. Did the District Court err by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to reverse the Department's decision, which indicated the “Silver Elite” Account was Victoria's not her son's?

### **\*28 IV. ARGUMENT**

#### **A. Standard of Review**

Where the District Court conducts a Judicial Review of a Decision made by a government Agency under the Administrative Procedure Act (APA), it is often reviewed on the arbitrary and capricious standard, a legal ruling wherein an appellate court determines that a previous ruling is invalid because it was made on unreasonable grounds or without any proper consideration of circumstances. Court decisions concerning mixed questions of law and fact are usually subject to de novo review, unless factual issues predominate, in which even the decision will be subject to clearly erroneous review. When made by administrative agencies, decisions concerning mixed questions of law and fact are subjected to arbitrary and capricious review.

In failing to address Wayde Nelson's disability, there are questions of constitutionality. Questions of constitutionality are considered a type of question of law, and thus appellate courts always review these questions de novo. Concerning constitutional questions, three basic standards of review exist: rational basis, intermediate scrutiny, and strict scrutiny. This form of standard of review is sometimes also called the standard or level of scrutiny. Wayde Nelson suggests there may be a combination of these various Standards of Review in order to make a fair determinations regarding his Appeal to the Supreme Court.

**B. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to exclude errors in management made by the Department that were dismissively characterized by the hearing officer in his Preliminary Decision of August 31, 2010, as errors “in the realm of customer service satisfaction, beyond the scope of the hearing officer's authority to address.”**

#### **\*29 1. Facts pertaining to argument**



The District Court affirmed the decision of the Administrator for the Division of Welfare, Russell Baron, to exclude errors in management made by the Department that were dismissively characterized by the hearing officer in his Preliminary Decision of August 31, 2010, as errors “in the realm of customer service satisfaction...beyond the scope of the hearing officer's authority to address.” The decision to affirm was arbitrary and capricious, and a ruling that was clearly erroneous. There were mixed questions of law and fact that should have been considered at the time of the District Court's review and entering the Memorandum, Decision, and Order on June 21, 2013.

Clouding the factual records, were substantial “errors in the management” of Wayde Nelson's application process that were committed by Department staff. By blithely brushing off the substantial and pervasive handling of errors committed by the Department in processing Mr. Nelson's Food Stamp case, and in failing to communicate with Mr. Nelson during the process, the hearing officer eliminated from his own review, state of mind considerations significant to the assessment of Mr. Nelson's defense to the Department's IPV assertions. Wayde Nelson's disability report of childhood onset seizure disorder was overlooked by the District Court, Department Administrator of the Division of Welfare, and the hearing officer, all of whom had evidence to know that Wayde Nelson had disability, which should have been addressed under the Civil Rights component of the Food and Nutrition Act of 2008 and the Americans with Disabilities Act of 1990.

## 2. Why relief should be granted

**\*30** Wayde Nelson is a person with disability, who reported his disability on Applications for Assistance received by the Department. There are constitutional issues in the Department's disregard for considering his disability, as well as Code of Federal Regulations, [7 C.F.R.273.8\(b\)](#) addressing maximum allowable resources, including both liquid and nonliquid assets for households including one or more disabled members. Resources shall not exceed \$3,000.00. The District Court failed to observe that the Department erred by using the resource limit of \$2,000.00 for those without disability, since Department staff overlooked Mr. Nelson's report of disability. The Department also erred by failing to provide Mr. Nelson with an EBT card for 103 days so he could access funds in order to purchase food for his household. Additionally, the Department erred by issuing two cards to unknown food stamp recipients, who were able to purchase food totalling \$348.89 from funds deposited into Wayde Nelson's debit account by JPMorgan Chase, prior to Mr. Nelson being provided with an EBT card

According to Section 11 of the Food & Nutrition Act of 2008 ([7 U.S.C. 2020](#)) § 4117 (c)(2) Civil Rights Compliance. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 ([42 U.S.C.6101 et seq.](#)); (B) Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)); (C) The Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)), and (D) Title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)). In 2008, the Americans With Disabilities Act, became the Amended Americans with Disabilities Act of 2008, covering individuals with epilepsy even if their condition was in remission. Title I of the Americans with Disabilities Act of 1990 (ADA) makes it illegal to **\*31** discriminate against a qualified person with a disability in state and local governments.

The findings, inferences, conclusions, or decisions, were (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; and (5) arbitrary, capricious, or else an abuse of discretion. [Idaho Code [I.C. §67-5279 \(3\)](#)]

***C. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, who failed to prove Wayde Nelson's “intent” to commit an Intentional Program Violation (IPV) by an Enhanced Evidentiary Standard.***

### ***1. Facts pertaining to argument***

The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Ruseel Baron, who failed to prove Wayde Nelson's “intent” to commit an intentional program violation (IPV) by an Enhanced Evidentiary Standard.

Proof of an Intentional Program Violation requires the Department to establish an independent “intent” element, and by “clear and convincing” evidence. The District Court failed to observe that the hearing officer, after a brief observation of the hearing record, being “unclear as to whether a Department employee reviewed” [A.R. 6 para 10, p. 6], Wayde Nelson's 1/30//2009 Application for Assistance, although it was clearly stamped as received by the Department on 2/6/2009, the hearing officer, in the next paragraph discussed Mr. Nelson's efforts to investigate why he had not been timely issued his EBT card allowing access to promised benefits. As a chronology, Mr. Nelson's investigation did not start until a full year after submitting his second Application for Assistance, not until mid-February 2010. Chronology is significant because the hearing officer may have been confused in his review of the testimony, particularly those matters focusing on Mr. \*32 Nelson's state of mind. Through Mr. Nelson's persistence in writing to a number of people, including the Chairman of JPMorgan Chase Bank, and others to whom he was eventually referred, [AR 11 Ex. 121, 123].

There is overwhelming evidence to find an Agency Error Claim [IDAPA 16.03.04.675.03](#), “caused by a Department action, or a failure to act”, a circumstance not reached or considered by either the hearing officer or the Department's Administrator for the Division of Welfare, due, at least in part, to their flawed causal analysis on the IPV proof of “intent” component.

At the time of the District Court affirming the decision of Administrator for the Division of Welfare, indicating that Mr. Nelson committed an Intentional Program Violation, the Department did not consider facts indicating more than documentary evidence is needed to prove an intentional program violation. [*Frank v. Ohio Dep't of Human Services*. 673 N.E. 2d 653 (Ohio Ct. App. 1996)]. The burden of proving a matter by clear and convincing evidence is a heavier burden than the preponderance of evidence standard. [*Murphy v. I.N.S.* 54 F. 3d 605, 610 (9th Cir.1995)].

Code of Federal Regulations, [7 C.F.R. 273.8\(b\)](#) indicates maximum allowable resources, including both liquid and non-liquid assets for households including one or more disabled members, resources shall not exceed \$3,000.00. As of January 8, 2010, Wayde Nelson was receiving Idaho Department of Health and Welfare Assistance for the Aged, Blind, and Disabled Medicaid, confirming the Department's division that covers requests for Medicaid Assistance determined that Wayde Nelson had disability because he applied for Social Security benefits, and/or Supplemental Security Income (SSI). The Department erred by using the resource limit \*33 of \$2,000.00 for those without disability, and the District Court affirmed the decision of the Department's Administrator for the Division of Welfare.

Pursuant to Code of Federal Regulations, [7 C.F.R. 253.8\(e\)](#), the Department is to provide the household member with a notice of disqualification within 10 days of substantiating that a household member has committed an intentional program violation. The Department provided four notices of disqualification dated October 22, 2009, November 24, 2009, January 21, 2010, and March 11, 2010, vacillating in its decision as to whether or not Wayde Nelson committed an Intentional Program Violation (IPV) or an Inadvertent Household Error (IHE). On the second notice of disqualification mailed to Wayde Nelson on November 24, 2009, he was informed that he committed an Inadvertent Household Error (IHE). IDAPA 16.03.04. 675 (a), indicates an IHE is a household error, without intent to cause an overissuance, which results in a Food Stamp over-issuance. It did not change the amount the Department alleged Mr. Nelson owed, \$1,380.00. More Than documentary evidence is needed to prove an intentional program violation. [*Frank v. Ohio Dep't of Human Services*. 673 N.E.2d 653 (Ohio Ct. App.1996)]. The demand letters Were inadequate because they did not inform the recipient of the state's discretionary Settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments.[*BLIEK v. PALMER*, 102 F.3d 1472 (8th Cir. 1997)].

The Department did not close or schedule a disqualification hearing within 90 days within 90 days of mailing the October 22, 2009 Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for prosecuting a \*34 program violation had passed. The Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional program program violation. [*Code of Federal Regulations*, 7-CFR 243.16 (e)(2)(iv)].

It is significant that even though the Department sent a Notice of Disqualification and Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement to Wayde Nelson on October 22, 2009, the Department had not yet

substantiated that Wayde Nelson committed an intentional program violation, since the next notice sent to Wayde Nelson on November 24, 2009, indicated he committed an Inadvertent Household Error.

Eventually at the disqualification hearing, it was decided that Wayde Nelson owed the Department \$323.00. This was also incorrect, since the Department issued EBT cards to two other individuals who accessed Wayde Nelson's food stamp funds in March 2009, prior to Mr. Nelson being issued an EBT card. They withdrew \$348.89 out of the debit account. These funds were never reimbursed into Wayde Nelson's food stamp debit account.

Despite the Department failing to conduct a disqualification hearing within 90 days of notifying the household an intentional program violation, the Department mailed additional Notices of Disqualifications and Demands for Repayment of Overissuances/Overpayments and Repayment agreements on November 24, 2009, January 21, 2010, and March 11, 2010. The November 24, 2009 Notice of Disqualification indicated Wayde Nelson committed an Inadvertent Household Error, confirming that by November 24, 2009, the Department had not substantiated that Wayde Nelson committed an intentional program violation. It was difficult to ascertain which Notice of Disqualification the Department acted on when hearing was scheduled.

## **\*35 2. Why relief should be granted**

Wayde Nelson is a person with disability, who reported his disability on Applications for Assistance received by the Department. There are constitutional issues in the Department's disregard for considering his disability, as well as Code of Federal Regulations [7 C.F.R.273.8\(b\)](#) indicating maximum allowable resources, including both liquid and nonliquid assets for households including one or more disabled members, resources shall not exceed \$3,000.00. The Department erred by using the resource limit of \$2,000.00 for those without disability, then deciding that Wayde Nelson committed an intentional program violation and owed the Department \$323.00. Had the Department used the correct criteria identified in the Code of Federal Regulations [7 C.F.R. 273.8\(b\)](#) identified above, there would not have been an Overissuance of Food Stamp benefits, since the resource limit is higher for a person with Disability. Wayde Nelson never had resources over \$3,000.00 per month.

According to Section 11 of the Food & Nutrition Act of 2008 ([7 U.S.C. 2020](#)) § 4117 (c)(2) Civil Rights Compliance. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 ([42 U.S.C.6101 et seq.](#)); (B) Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)); (C) The Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)), and (D) Title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)). In 2008, the Americans With Disabilities Act, became the Amended Americans with Disabilities Act of 2008, covering individuals with epilepsy even if their condition was in remission. Title I of the Americans with Disabilities Act of 1990 (ADA) makes it illegal to **\*36** discriminate against a qualified person with a disability in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit, et al.

The findings, inferences, conclusions, or decisions, were (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; and (5) arbitrary, capricious, or else an abuse of discretion. [*Idaho Code I.C. §67-5279 (3)*]

***D. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, who affirmed the Department decision, which failed to find that the hearing officer erroneously interpreted Wayde Nelson's exhibits included with his Application for Assistance concerning Victoria Nelson's role and intent.***

### ***1. Facts pertaining to argument***

Each of the first two Applications for Assistance filed by Wayde Nelson contained exhibits pertaining to the supportive role Victoria Nelson, Mr. Nelson's mother, and Heather's grandmother, played in their past and prospective economic support.

Scrutiny of case documents and Victoria's testimony belies the interpretations of the District Court who affirmed the decision of the Administrator for the Division of Welfare. There were two groups of documents related to Victoria. First, a page of her new "Silver Elite" checking account with US Bank was attached to both Applications for Assistance filings; second, her signed contribution statement and loan related documents were relied on to substantially defeat a "loan" interpretation of her monetary support for her son and granddaughter. Her intent was ascertained by fact-finders \*37 contrary to her testimony and was relied on to impose an intentional program violation penalty on her son. Each of these conclusions is contrary to the evidence.

From the inception, the record is clear that Wayde Nelson had no employment income and was dependent on his now 79 year old disabled mother, Victoria Nelson, who was living on Social Security Retirement benefits, work's compensation benefits, and the borrowings on a residential reverse mortgage on her home, in order to help support her son and granddaughter. Initially the Department alleged in the Waivers of Disqualification and Demand Letters that Wayde Nelson owed the Department \$1,380.00, which should have been substantiated by the time of sending notices to Wayde Nelson. However, at the time of hearings, by counting Victoria Nelson's payments to Mr. Nelson during February 2009 as a non-loan, considering the funds a component of Mr. Nelson's household resources, the Department reached its finding of an overpayment of food stamp benefits for which it imposed the one month payback of \$323.00. This was clearly error. 7 C.F.R. 253.8(e), indicates the Department is to provide the household member with a disqualification notice within 10 days of substantiating that a household member has committed an intentional program violation (IPV). The notice provided, which was evidently not substantiated, indicated Mr. Nelson owed the Department a pay-back of \$1,380.00, yet when the amount was later substantiated, Mr. Nelson owed \$323.00. It is this finding, in particular, that Wayde Nelson contends is unsupported by the factual record and by the interactions and communications between the parties. The Department never communicated to Wayde Nelson that his documentation of a loan was inadequate, or that the Department overlooked \*38 considering his report of a disability of childhood onset seizure disorder on the Application received by the Department on February 6, 2009.

At the time of the Department alleging that Wayde Nelson committed an Intentional Program Violation, Victoria Nelson, Wayde Nelson's mother, was 74 years of age. Her only income reportable to IRS was Social Security Retirement Benefits. All income coming into the home was intended exclusively for Victoria.

## 2. Why relief should be granted:

The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, who affirmed the Department decision, which failed to find that the hearing officer erroneously interpreted Wayde Nelson's exhibits included with his Application for Assistance concerning Victoria Nelson's role and intent. Wayde Nelson had disability identified under the Social Security Act and SSI. The Department failed to consider his disability or abide by the Food and Nutrition Act of 2008.

According to Section 11 of the Food & Nutrition Act of 2008 (7 U.S.C. 2020) § 4117 (c)(2) Civil Rights Compliance. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); (B) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); (C) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and (D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). In 2008, the Americans With Disabilities Act, became the Amended Americans with Disabilities Act of 2008, covering individuals with epilepsy even if their condition was in \*39 remission. Title I of the Americans with Disabilities Act of 1990 (ADA) makes it illegal to discriminate against a qualified person with a disability in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit, et al.

The findings, inferences, conclusions, or decisions, were (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; and (5) arbitrary, capricious, or else an abuse of discretion. [Idaho Code I.C. §67-5279 (3)]

**E. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron who affirmed the Department's decision when the decisions inaccurately characterized the Application for Assistance Interview process concerning the actions and intent of the participants.**

### **1. Facts pertaining to argument**

The District Court erred by affirming the decision of the Administrator for the Division of Welfare, who affirmed the Department's decision when the decisions inaccurately characterized the Application for Assistance Interview process concerning the actions and intent of Wayde Nelson, a party with a disability of childhood onset seizure disorder, which was reported to the Department on more than one occasion. The Department was aware of Mr. Nelson's disability since it was reported on Applications for Assistance filed with Idaho Department of Health and Welfare. The Department exempted Mr. Nelson from the Job Search Assistance Program due to permanent disability based upon information from the California Department of Rehabilitation. \*40 The Department granted Mr. Nelson Assistance to the Aged, Blind, and Disabled Medicaid (AABD), on January 8, 2010, prior to the Department scheduling a Disqualification Hearing. Edward C. Lockwood was the hearing officer who heard the Department case in which Mr. Nelson was given AABD Medicaid [Wayde Nelson vs. IDHW, Case No.: 09-FH8042-04-224].

A fair interpretation of the initial Application for Assistance, interview and benefit issuance process demonstrates Wayde Nelson's good faith approach toward working within the system to comply with requirements allowing his obtaining and continuing to qualify for access to Food Stamp benefits for his household of himself and his minor daughter, yet the Department referred to Wayde Nelson's submitting a less than perfectly completed application and stating, how his failure to have done more, in retrospect satisfies standards for its bringing an IPV charge. The Department's assertions of reliance on Wayde Nelson's second Application for Assistance dated 1/30/2009 in arguing its IPV intent case, while disparaging the need for Mr. Nelson to have filed it [AR 2, Final Decision, p.2, fn. 2], there observing: "It is unclear why Nelson submitted the second application. IDHW had already approved his benefits, opened his case and sent out notices. IDHW did not require the second application nor make any representations that the second application superseded the first." Yet, while ignoring that he even filed the second Application for Assistance, although he did so consistent with his prior loan vs. gift discussion with Ms. Antram, the designated Department Food Stamp interviewer. The Department did not explain rights, responsibilities, procedures and reporting requirements or resolve unclear or incomplete information [[IDAPA 16.03.04.122](#)].

Mr. Nelson later provided additional materials and information, including much data not \*41 requested by the interviewer. He wrote and faxed her a memo that same day summarizing their discussions [AR 13, Ex. 3-a]. Wayde Nelson believe he substantially complied with data submission regulations and answered all the questions asked of him.

### **1. Why relief should be granted:**

Evidence provided by Wayde Nelson substantiates the District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron who affirmed the Department's decision when the decisions inaccurately characterized the Application for Assistance Interview process concerning the actions and intent of the participants. Wayde Nelson has disability that was overlooked by the Department, though it was reported on the Application for Assistance received by the Department on February 6, 2009, and on the Recertification received by the Department on April 29, 2009. Wayde Nelson's disabling condition comes under the Americans with Disabilities Act of 1990, the Amended Americans with Disabilities Act of 2008, and other Acts of the U.S. Government the State of Idaho is required to abide by.

According to Section 11 of the Food & Nutrition Act of 2008 ([7 U.S.C. 2020](#)) § 4117 (c)(2) Civil Rights Compliance. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 ([42 U.S.C.6101 et seq.](#)); (B) Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)); (C) The Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)), and (D) Title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)). In 2008, the Americans With Disabilities Act, became



the Amended Americans \*42 with Disabilities Act of 2008, covering individuals with epilepsy even if their condition was in remission. Title I of the Americans with Disabilities Act of 1990 (ADA) makes it illegal to discriminate against a qualified person with a disability in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit, et al.

**F. The District Court erred by affirming the decision of the Administrator for the Division of Welfare, Russell Baron, to reverse the Department's decision, which indicated the "Silver Elite" Account was Victoria's not her son's.**

**1. Facts pertaining to argument**

The District Court erred by affirming the decision of the Administrator for the Division of Welfare, to reverse the Department's decision, which indicated the "Silver Elite" Account was Victoria's not her son's.

Had the Department considered Wayde Nelson's disability reported on the Application for Assistance received on February 6, 2009 and the April 29, 2008 Recertification, the maximum resources for an applicant with disability would have been \$3000.00 per month, not the \$2,000.00 the Department erroneously attributed to Wayde Nelson's Food Stamp household. Had it not been for Department error in dealing with Wayde Nelson, who had disability, there would have been no need to consider the amount of income Mr. Nelson's household was receiving from his mother's "Silver Elite" bank account, since his household income never went over the \$3,000.00 amount allowed for a household with a member who has disability. Even after the Department failed to evaluate Wayde as a person with disability, though he was exempt \*43 from JSAP for permanent disability as of October 2009 [IDAPA 16.03.04.227.03], and received AABD Medicaid on January 8, 2010 [IDAPA 16.03.04.216.02 and 03]. The Department wrongfully accused Mr. Nelson of an Intentional Program Violation (IPV), brought about excessive litigation of a matter that should never have happened, and decided there was a pay-back of \$323.00 due, giving no consideration to the \$348.89 used wrongfully by individuals the Department issued cards to who were able to access Mr. Nelson's debit account.

All actions in this case were made by the Department who overlooked the disability reported by Wayde Nelson. The "Silver Elite" Account was Victoria Nelson's, not her son's, and neither the instances of its disclosure, nor the history of its use appropriately disqualified Wayde Nelson from Food Stamp benefits [I.C. §15-6-103].

**2. Why relief should be granted:**

IDAPA16.03.04.314, Jointly Owned Resources: A resource owned jointly by members of two or more households is counted in its entirety for each household, unless the household proves the resource is not available. If the household shows it has access to only a portion of a resource, that portion of the resource is counted. Victoria Nelson made the deposits and the resources are not those of Wayde Nelson, except as she allowed him limited access as part of her intra-family loan to him until he was employed as she had reason to expect.

With reference to Wayde Nelson attaching a copy of the 10/6/2008 monthly statement of the US Bank monthly statement to his 12/8/2008 Application for Assistance, he committed no actionable conduct. His mother was the owner, had opened the account for her primary use, and added his name for convenience to assist her while she was in California or elsewhere, in paying \*44 bills on her instructions associated with her Idaho residency and home expense. All funds deposited into this account were deposited by Victoria Nelson. This she requested for her benefit and explained at hearing its opening, why she added him, including his address because of the location and security associated with her rural White Bird mailbox [AR 1, pp. 301 - 303].

Title 15, Idaho Uniform Probate Code, I.C. §15-6-103, referring to account ownership during a lifetime, states (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. Wayde Nelson had no income and did not deposit



money into this account. Though Mr. Nelson's name was added to the account to assist his mother, he was not the owner of the account since there were no contributions to the account made by Mr. Nelson. [[I.C. 15-6-103](#)].

#### **\*45 CONCLUSION**

The District Court's Judicial Review does not support the findings and Final Order that Wayde Nelson, by clear and convincing evidence, committed an Intentional Program Violation in his application for Food Stamp benefits for himself and his household. Appellant respectfully submits that his Appeal to the Supreme Court of a Court Memorandum, Decision, and Order following Judicial Review of a Decision issued by the Idaho District Court by Judge Kathryn A. Sticklen, in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, review is well taken that the Department has failed to sustain its case for program disqualification and the matter should be reversed and remanded with instructions to remove from Petitioner's record the findings of an Intentional Program Violation.

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